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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 368

THE DE LA RAMA STEAMSHIP COMPANY, INC.
Petitioner

against

UNITED STATES OF AMERICA
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

October Term 1952

No. 368

THE DE LA RAMA STEAMSHIP COMPANY, INC.
Petitioner
against
UNITED STATES OF AMERICA
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

BRIEF FOR PETITIONER

Opinion Below

The opinion of the Court of Appeals for the Second Circuit (R. 71) is reported at 198 F. 2d 182.

Jurisdiction

The Court of Appeals' order (R. 89) denying petitioner's timely petition for rehearing of said court's judgment entered July 2, 1952 (R. 77), was entered July 29, 1952. The petition for a writ of certiorari was filed September 30, 1952 and was granted November 17, 1952, limited to the question of the jurisdiction of the district court (Southern District of New York). The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

Question Presented

Did the repeal July 25, 1947 of the War Risk Insurance Act of June 29, 1940, as amended, which repeal made no reference to pending suits, divest the district court of jurisdiction of this then pending suit, which had been properly brought in 1944 under said statute for the recovery of Government war risk insurance?

Or (as petitioner earnestly submits) was not the jurisdiction of the district court preserved by operation of the general savings statute (1 U. S. C. 109) in relation to the repealed statute, or in any event under the Suits in Admiralty Act?

Statutes Involved

The relevant portion of the general savings statute (61 Stat. 633; 1 U. S. C. 109) provided:

> "§ 109. The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. * * *"

Relevant portions of the War Risk Insurance Act of June 29, 1940 (54 Stat. 689; 46 U. S. C., 1940 ed., 1128-1128g; 221-228, Merchant Marine Act of 1936), as amended; the Joint Resolution of July 25, 1947 (61 Stat. 449, 450) repealing said insurance statute; the Suits in Admiralty Act (41 Stat. 525; 46 U. S. C. 741-752); and the full text of the general savings statute (1 U. S. C. 109)*, are set forth in Appendix I *infra*, pp. 25-28.

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* Section 13, Revised Statutes, originally enacted as § 4 of Act of February 25, 1871 c. 71, 16 Stat. 432, formerly 1 U. S. C. 29. On July 30, 1947 this section, as amended, was enacted as 1 U. S. C. 109 and is referred to throughout this Brief as "§ 109".

Statement

The steamship DOÑA AURORA, owned by the petitioner, a Philippine corporation, was torpedoed and sunk December 25, 1942 while under requisition time-charter and covered by Government war risk insurance under the June 29, 1940 Act, in an amount and at a valuation measured by "just compensation" (R. 41-44).

When the parties could not agree upon the "just compensation" to which it became entitled, petitioner filed its libel December 22, 1944 in the district court pursuant to the War Risk Insurance Act of June 29, 1940 [§ 225, Merchant Marine Act of 1936, as amended; § 1128d, 46 U. S. C.].

In October 1948 the court referred the valuation issue (R. 32); extensive hearings were held before the commissioner, ending in November, 1949. The case was argued and briefed, and the commissioner made his report in March, 1950 valuing the vessel at $2,082,000 as of the date of loss. By order dated August 4, 1950 (R. 36) the district court overruled the respective exceptions of the respondent and libellant (R. 33, 35) and confirmed the commissioner's valuation (Opinion, 92 F. Supp. 243).

Not until the trial, March 6-7, 1951, did the Government contend, then for the first time, that the repeal in 1947 had divested the district court of jurisdiction of this suit.*

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* The Government refrained from making any such contention to the Second Circuit on the argument of its appeal May 8-9, 1951 in a similar suit under the same repealed insurance statute to recover for total loss of the Alaskan [*The Alaskan*, 85 F. Supp. 815; supplemental decision, 92 F. Supp. 785; affirmed, 191 F. 2d 26 (2d Cir. 1951), cert. den. 342 U. S. 941]. Prior to its decision herein said court had disposed of several war risk insurance cases on their merits after the repeal of the very same insurance statute which is involved here, e.g. *The Alaskan, supra; Standard Oil Co.* v. *United States*, 178 F. 2d 488 (1949), aff'd. 340 U. S. 54; *Daranowich* v. *Land*, 186 F. 2d 386 (1951), cert. den. 341 U. S. 942; *Gregory* v. *United States*, 187 F. 2d 101 (1951).

The district court held that by virtue of the general savings statute—there being no language in the repealing statute indicating a contrary intention, jurisdiction continued for the purpose of determining the liability saved by the general savings statute (R. 51-54; 98 F. Supp. 514, at 518-519). Accordingly, a final decree was entered July 6, 1951 (R. 62) awarding petitioner $1,476,377.38 based on the Commissioner's valuation, after adjustment for payments on account in April-May, 1947, plus interest etc. as specified therein.

The Court of Appeals, however, held on appeal that although the insurance statute remained in force so far as substantive liability was concerned, that intrinsic provision of such statute which authorized the filing and maintenance of the present suit was repealed and the district court was thereupon deprived of jurisdiction to continue with the suit to enforce the saved liability (R. 74; 198 F. (2d) 182 at 184-185). The decree of the district court was thereupon reversed, with directions that the libel be dismissed for want of jurisdiction (R. 77, 90).

Specification of Errors

The Court of Appeals erred:

In holding that the jurisdiction of the district court conferred by the War Risk Insurance Act of June 29, 1940 under which the suit was properly commenced in December, 1944, was divested by the repeal of said statute by the Joint Resolution of July 25, 1947 (61 Stat. 449, 450; Appendix I, *infra*, p. 27); and that such jurisdiction was not preserved by the general savings statute (1 U. S. C. 109; Appendix I, *infra*, p. 27).

Regardless of the repeal of the insurance statute in 1947 it is also submitted that the district court continued to have jurisdiction under the Suits in Admiralty Act (46 U. S. C. 741-752).

Summary of Argument

1. The court below applied the general savings statute too narrowly; it failed to give effect to the portion thereof which clearly sustained district court jurisdiction.

The insurance *statute* was repealed as a whole (61 Stat. 449, 450; Appendix I, *infra*, p. 27)—both the provisions whereunder liability was incurred (46 U. S. C. 1128, 1128a) and the intrinsic provision thereof conferring jurisdiction on the district court (1128d).

Although the court below recognized that the opening words of the general savings statute:

> "The repeal of any statute shall not have the effect to release or extinguish * * * any liability incurred under such statute, * * *"

saved the insurance "liability," it treated as though nonexistent or inoperative the further provision of 1 U. S. C. 109

> "* * * and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such * * * liability [i.e. liability incurred under such statute]."

Since district court jurisdiction had been conferred by an intrinsic provision of the "statute" repealed, it seems inescapable—considering the express language and the remedial purpose of 109—that the insurance statute in its entirety must "be treated as still remaining in force for the purpose of sustaining" the present action, which had been properly instituted under the repealed statute. Such interpretation gives plain effect to the portion of 109 which the court below disregarded.

Petitioner's view is strongly supported by the decision of the Ninth Circuit on the identical point [*United States* v. *McNair*, 180 F. 2d 273 (1950)] which was followed by the district court (R. 53), but not by the Court of Appeals.

2. The legislative purpose of the repealing Act was merely to terminate the Government's war power to write marine war risk insurance [Sen. Rep. No. 399 and H. R. Rep. No. 799—80th Cong. 1st Sess. (1947)]. It looked to the future, not to the past.

3. The court below erroneously based its decision on cases holding that the general savings statute does not save "merely jurisdictional statutes". *Hallowell* v. *Commons*, 239 U. S. 506, 508; *Bruner* v. *United States*, 343 U. S. 112, etc. Such authorities are clearly distinguishable and inapplicable since the repealed statutes therein involved merely conferred jurisdiction on a particular court and did not, as here, likewise create the substantive liability.

4. The construction of the general savings statute adopted "most reluctantly" by the court below (R. 77) appears to be contrary to applicable decisions of this Court in analogous situations, e.g., in price control and rent control cases where jurisdiction with respect to occurrences prior to the termination date of the respective statutes was held to be preserved by the general savings statute, or by similar savings clauses in the terminated statutes. *United States* v. *Kromer* (No. 1101); *United States* v. *Palletz* (No. 1100), 330 U. S. 812; *United States* v. *Fortier*, 342 U. S. 160, 161 (f.n. 3); *Woods* v. *Hills*, 334 U. S. 210, 214-217, etc.

150 East 47th Street Corp. v. *Porter*, 156 F. 2d 541 (E. C. A. 1946) also supports petitioner's position, notwithstanding the effort of the court below to distinguish it because of the "complex interrelated jurisdictional set-up", or because there was no statutory authority for any other

court to entertain that suit (R. 76). Jurisdiction was preserved in the *Porter* case because it was "beyond doubt" that the situation came within the literal terms of the statutory savings clause [156 F. 2d 544]. The meaning and application of the general savings statute cannot depend on how it may work out in different cases, or upon the degree of complexity in the situation.

5. The harsh and illogical *half-way* application of the general savings statute by the court below, resulting in dismissal of the libel, would relegate petitioner after having secured a final decree in the district court uncontested as to jurisdiction, to years of further litigation in the Court of Claims where adequate relief is apparently lacking. The prohibition in that court against interest prior to judgment (28 U. S. C. § 2516)—if applied in this case, would wipe out substantial interest accrued *before* the repeal of the insurance statute, as well as thereafter while the Government continued to litigate the case solely on the merits.

The decision below would also have a devastating effect on many other important pending litigations in the Second Circuit involving Government insurance based on the same repealed insurance statute, and where recourse to the Court of Claims apparently would be time-barred in many instances (see Appendix II, *infra*, pp. 29-31).*

All prejudice to petitioner and to others similarly situated—as well as to the Government—would be avoided by the literal, likewise reasonable, application of the general savings statute advocated by petitioner.

6. The Government's liability stemmed from the insurance provisions of the requisition time-charter of the

* The present petitioner had filed a precautionary suit in the Court of Claims in December, 1948, within six years after the loss. Our check-up indicated that very few other protective suits had been filed in the Court of Claims—very likely in view of the threat implicit in 28 U. S. C. 1500.

DONA AURORA and the formal binder issued thereunder. This liability would appear to be enforcible in any event in the district court under the Suits in Admiralty Act (41 Stat. 525; 46 U. S. C. 741). The DONA AURORA was operated by petitioner "for" the Government and was employed as a "merchant vessel" at the time of her loss (R. 41, 43-44). Petitioner's cause of action was to recover on the Government's marine insurance undertaking with respect to a vessel requisitioned on time-charter basis, and being privately operated a proceeding in admiralty *in personam* could have been maintained. *Matson Navigation Co.* v. *United States*, 284 U. S. 352; *Insurance Co.* v. *Dunham*, 11 Wall. 1, 21; *Jeffcott* v. *Aetna Ins. Co.*, 129 F. 2d 582 (2nd Cir., 1942). All the prerequisites for suit against the United States under the Suits in Admiralty Act appear to have been fully met in this case.

Argument

1. The general savings statute (1 U. S. C. 109) effectively preserved not only the insurance liability incurred under the repealed insurance statute but also the district court jurisdiction conferred by said statute to enforce such liability.

The basic error in the decision below is the court's treatment of Section 225 of the Merchant Marine Act of 1936 as amended (46 U. S. C. 1128d) as a "statute" separate and distinct from the other component sections of the War Risk Insurance Act of June 29, 1940 (46 U. S. C. 1128-1128h). That insurance statute as a whole was added to said Merchant Marine Act of 1936 as a new and separate Subdivision thereof on Insurance.

Said Act of June 29, 1940 (the insurance statute) did not consist of a number of separate "statutes" but was a single statute made up of closely integrated provisions, including Section 225.

The Government's insurance liability was incurred under such insurance statute. But said statute also, in Section 225, one of its integral provisions, conferred exclusive jurisdiction on the district court through the medium of the Suits in Admiralty Act,—all as part and parcel of the well considered statutory plan and purpose.

The court below pointed out correctly that the general savings statute "applies only to those *repealed statutes* which impose * * * liability", and that "*only such statutes*" are continued in force after the repeal "for the purpose of sustaining any proper action * * * for the enforcement of such * * * liability" (R. 74). This would seem conclusive in petitioner's favor. The court had no warrant for its immediately ensuing conclusion that "The reference is thus seen to be only to those *provisions of* repealed statutes under which substantive rights have been acquired" (R. 74; emphasis supplied).

Section 109 provides that a *repealed statute* under which liability was incurred is to be saved, and is to be treated as remaining in force to sustain any proper action for the enforcement of such liability. It does not purport to save only "those *provisions of* repealed statutes" under which liability has been incurred, to the exclusion of those providing a remedy. The court read into the savings statute words not found in the statute nor suggested by its purpose.

The court below failed to appreciate the significance of the fact that although petitioner's insurance rights and the Government's corresponding liabilities were respectively acquired and incurred under certain provisions of the repealed insurance statute (Section 222; 46 U. S. C. 1128a), that self-same statute by other intrinsic provisions thereof (Section 225; § 1128d) conferred district court jurisdiction as the statutory remedy.

The repealing Act of July 25, 1947 (61 Stat. 450) did not pick out Section 225 as a "statute" to be repealed, but

on the contrary repealed the insurance statute as a whole: the "Act of June 29, 1940, as amended". Consequently the repealed "statute" was preserved by § 109 not only as to "liability" but also inevitably as to jurisdiction of this "proper action * * * for the enforcement of such * * * liability". Only such interpretation gives effect and meaning to all parts of § 109.

If § 109 was merely aimed to preserve existing liabilities under the repealed statute, this was accomplished by the language:

> "The repeal of any statute shall not have the effect to release or extinguish any * * * liability incurred under such statute * * *."

There would have been no need to add the further language:

> "* * * and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action * * * for the enforcement of such * * * liability".

There is therefore no warrant for any departure from the plain and usual meaning of "statute" as said word is used in the general savings statute. Since the remedy is to be preserved by treating the repealed statute as "still remaining in force" for the enforcement of the saved liability, it is clear that the remedy provided under the insurance statute—in this case, the action in the district court—was preserved.

Our proposition is that "statute" as used in § 109 means "statute" and not something different and that where, as here, such "statute" both created the Government's liability and conferred exclusive jurisdiction on the district court, § 109 preserved both the liability and the specified remedy. This conclusion would appear to be compelled by all standards of statutory construction, likewise by every applicable decision; furthermore by the inherent equities.

There is not a word in § 109 that suggests that where it is operative with respect to a statute anything less than that whole statute is preserved.

Contrary to the decision below, the Ninth Circuit Court of Appeals in *United States* v. *McNair*, 180 F. 2d 273 (1950) decided that notwithstanding the repeal of this same insurance statute the jurisdiction of the district court had been preserved by the general savings statute. In deciding the question of jurisdiction which it had raised *sua sponte*, the court said (at 274):

> "We are of the opinion that the liability hereafter stated having been incurred by the United States prior to the repeal of the Act of June 29, 1940, the right of recovery therefor continued to exist under 1 U. S. C. 29 [now 109]".

Accordingly, that court affirmed (with immaterial modification) the district court (District of Washington) decree in admiralty for war risk recovery based on the repealed statute, both as regards liability and jurisdiction.*

2. Purpose of the repeal was only to end certain war powers no longer necessary or appropriate to exercise.

There is nothing in the repealing Act evincing any legislative purpose or intent to minimize the saving effect of § 109 or to deprive the district court of jurisdiction of any then pending insurance actions under the repealed statute. To the contrary, the legislative history of the repealing Act shows that the repeal was not related to jurisdiction.

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* The district court herein properly relied on the *McNair* case in sustaining jurisdiction (R. 53).

There is no warrant for the suggestion by the court below (R. 75) that "it may well be" that the Ninth Circuit 'thought' that jurisdiction was sustainable under the Tucker Act. Neither the Tucker Act nor any other alternative basis of jurisdiction was referred to.

As indicated by its title and the Committee reports, the purpose of the repeal was to effect "termination of war and emergency powers no longer considered essential to the war effort" (Sen. Rep. No. 399 and H. R. Rep. No. 799—80th Cong. 1st Sess. [1947]). As to the insurance statute, one of the many war power statutes repealed, the Department of Justice had advised the Senate Judiciary Committee (Sen. Doc. No. 42, 80th Cong. 1st Sess. [1947]):

> "This statute may be repealed inasmuch as the authority provided thereunder is no longer needed and its effectiveness is limited to the present war" (p. 88).

The word *authority* obviously referred to powers in the executive, not in the judiciary, and the time limitation—"the present war"—could refer only to the creation of new obligations, not to the settlement of existing ones.

Thus the Congressional purpose in relation to the insurance statute looked to future conditions only, and did not purport to touch pending litigation.

3. The insurance statute was not a "merely procedural statute" as to which § 109 admittedly would have no application.

The misconception of the court below (R. 74) is manifest from the authorities it cited. They were cases where the repealed statute (or statutory provision) was merely a jurisdictional statute (or provision), not, as here, a statute under which substantive rights arose with intrinsic provision in the same statute as to jurisdiction to enforce such substantive rights.

Thus in *Hallowell* v. *Commons*, 239 U. S. 506, the repeal dealt specifically and solely with the statutory provision relating to jurisdiction. It took away the jurisdiction of the courts to determine the heirs of an intestate Indian allottee and expressly vested such jurisdiction in the Secre-

tary of the Interior. The repeal there did not affect or purport to deal in any manner with, substantive rights or liabilities created by or "incurred under" other provisions of the basic statute, which were not altered. That repeal had nothing to operate on except jurisdiction. This Court therefore held that the general savings statute could not apply. In the language of Mr. Justice Holmes the repeal (508):

> "takes away no substantive right but simply changes the tribunal that is to hear the case. In doing so it evinces a change of policy, and an opinion that the rights of the Indians can be better preserved by the quasi-paternal supervision of the general head of Indian affairs."

Bruner v. *United States,* 343 U. S. 112, was an even clearer case for non-application of the general savings statute, since there the substantive liability was incurred under statutes [5 U. S. C. 43; 56 Stat. 1068 (1942); 57 Stat. 75 (1943)] entirely separate from the Tucker Act, which merely conferred jurisdiction upon the district court concurrent with the Court of Claims.

The repeal in *Bruner* related only to the jurisdictional provision in the Tucker Act which had conferred such concurrent jurisdiction. There was no basis therefore for any contention that, with the saving of a substantive statutory right, an intrinsic enforcement provision was also saved. Accordingly, this Court had no choice but to apply the rule that when a law merely conferring jurisdiction is repealed, without reservation as to pending cases, "all cases fall with the law". The Court made it clear, however, that the "general savings statute" (§ 109), was inapplicable only because

> "Congress has not altered the nature or validity of petitioner's rights or the Government's liability but has simply reduced the number of tribunals authorized to hear and determine such rights and liabilities." (117)

Insurance Company v. *Ritchie*, 72 U. S. 541 also involved an amendment relating only to jurisdiction. Moreover, it was decided several years before the general savings statute was enacted in 1871.

The foregoing decisions relied on by the court below could not be deemed analogous unless the repealing Act here (Joint Resolution of July 25, 1947; 61 Stat. 449, 450) had repealed *only* Section 225 (1128d), with the other sections of the Act of July 29, 1940 left unaffected.* Then—and only then—could *Bruner* or *Hallowell* be in point.**

4. The decision of the court below is in conflict with applicable decisions of this Court.†

We are not aware of any decision since the enactment of the general savings statute in 1871 holding that upon repeal of a statute creating a substantive liability and also conferring jurisdiction for enforcement of the same, the savings statute would operate to preserve only the substantive liability but not the statutory remedy to enforce it. This Court has definitely and consistently indicated that in such situation the statutory jurisdiction, as well as the liability, survives the repeal.

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* *U. S.* v. *Obermeier*, 186 F. 2d 243, 251 (2nd Cir., 1950) obviously has no application. There "the pertinent substantive section, 8 U. S. C. A. § 746(a)(1), under which defendant was indicted, was not repealed" (251). Only "§ 746(g)—the statute of limitations pertaining to offenses under § 746(a)(1)—was repealed".

** Force is given to our argument by the fact that in several instances the Joint Resolution of July 25, 1947 repealed only a particular "section" of a statute, whereas it repealed the entire insurance "Act of June 29, 1940 as amended".

† This Court on writ of certiorari to the Second Circuit, *Standard Oil Company of New Jersey* v. *United States*, 340 U. S. 54, affirmed on the merits 178 F. 2d 488 (1949), wherein liability and jurisdiction depended solely on the same insurance statute, previously repealed,—although the question of jurisdiction was not specifically raised by counsel. What justification could exist for deferring the "question" to the case here at bar, does not appear.

United States v. *Kromer* (No. 1101), and *United States* v. *Palletz* (No. 1100), 330 U. S. 812, involved proceedings commenced August 29, 1946 in the district court to recover rent overcharges made in 1944 and 1945 contrary to § 4(a) of the Emergency Price Control Act of 1942 [56 Stat. 23 (1942), 50 U. S. C. App. (Supp. V 1946), § 901 et seq., § 904(a)], wherein district court jurisdiction had been conferred by § 205(c) [50 U. S. App. (Supp. V) § 925(c)]. By its terms said Act as amended June 30, 1945 (59 Stat. 306), terminated June 30, 1946.* The district court dismissed for want of jurisdiction. On appeal this Court reversed *per curiam*, 330 U. S. 812, holding, as the authorities therein cited show, that district court jurisdiction was preserved by the general savings statute [R. S. § 13, now § 109] as well as by the corresponding savings clause [1(b) as amended, 50 U. S. C. App. (Supp. V 1946), § 901(b)] in the repealed statute:

> "The judgments are reversed. 56 Stat. 23, 24, § 1(b) as amended, 50 U. S. C. App. (Supp. V, 1946) § 901(b); R. S. § 13, as amended, 58 Stat. 118; *Great Northern R. Co.* v. *United States*, 208 U. S. 452; *United States* v. *Reisinger*, 128 U. S. 398."

This decision was followed in *United States* v. *Wheelbarger* (No. 1334), 331 U. S. 791.

In similar proceedings under the Veterans Emergency Housing Act of 1946 (60 Stat. 207, 211, 50 U. S. C. App. § 1821 et seq.) which had been repealed by § 1(a) of the Housing and Rent Act of 1947 [61 Stat. 193, 50 U. S. C. App. (Supp. IV), § 1881(a)], this Court, affirming the court below, indicated clearly that as to transactions occurring before such repeal the general savings statute would preserve both the *liability* and the district court *remedy* provided by the repealed statute. *United States* v. *Fortier*, 342

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* A month later the Act of July 25, 1946, c. 671, § 1, 60 Stat. 664, purported to revive the Price Control Act until June 30, 1947, but it is clear from the record and briefs in this Court that the Price Control Act was treated as terminated on June 30, 1946, the cases being argued and decided on that basis.

U. S. 160, 161 (f.n. 3), affirming 185 F. 2d 608, 611 (1st Cir. 1950). See *United States* v. *See*, 194 F. 2d 100 (9th Cir. 1952).

In the *Fortier* case, *supra*, this Court in effect held that no " 'liability' had been incurred under the 1946 Act which would survive repeal under the general savings clause, 1 U. S. C. (Supp. IV) § 109" only because the sale of respondents' houses had not been made until after the repeal. Reference, by way of comparison, to *United States* v. *Carter*, 171 F. 2d 530 (5th Cir. 1948) indicated clearly that if the liability had been incurred under the 1946 Act before its repeal, the district court would have had jurisdiction by virtue of the general savings statute.

It is noteworthy that in the *Carter* case, at 532, the Fifth Circuit Court of Appeals had characterized § 109 as "the general law relating to the preservation of legal *rights and remedies* under a preexisting statute" [emphasis supplied]. The Fifth Circuit accordingly had held that a 1947 repeal (50 U. S. C. App. § 1881 et seq.) of § 5 of the Veterans Emergency Housing Act of 1946 did not take away the district court remedy provided in the repealed 1946 Act whereby the United States could secure restitution of overcharges made while said Act was in effect.

The suggestion is made in the Memorandum for the United States on our petition (f.n. 3, p. 3) that the cases above referred to (*Kromer*, etc.) may not rest on the general savings statute but on 18 U. S. C. 3231 and 28 U. S. C. 1345 (general jurisdictional statutes relating to criminal matters and civil cases involving the United States as plaintiff). But this Court in *Kromer*, *Palletz*, etc., did not mention 18 U. S. C. 3231 or 28 U. S. C. 1345, and there is no reason to suppose that the decisions would have been any different if the proceedings had been brought by private persons (rather than by the United States) under applicable sections of the statutes involved [Emergency Price Control Act of 1942, § 205(e); and Veterans Emergency Housing Act of 1946, § 7(d)].

Indeed, in *Woods* v. *Hills*, 334 U. S. 210, 214-217, involving a question as to the validity of a rent order which the Emergency Court of Appeals had exclusive jurisdiction to determine, this Court pointed out that as concerns an offense occurring prior to the termination date of the statute the jurisdiction of the Emergency Court of Appeals was preserved by a savings clause in the repealed statute similar to § 109. Referring to the savings clause in § 1(b), Emergency Price Control Act of 1942 as amended (56 Stat. 24) this Court said:

> "* * * Since the offense complained of in the case at bar occurred before the termination date, § 1(b) would apply and the Emergency Court of Appeals would still have exclusive jurisdiction to pass on the validity of the second rent order, * * *. (214)
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> * * *
>
> "We may now consider what effect the 1947 amendment, thus viewed, has upon the 'exclusive jurisdiction' provision in § 204(d), which was preserved by the savings clause of § 1(b)". (216)

Since the exclusive jurisdiction of the Emergency Court of Appeals as to the validity of the rent order was created solely by the terminated statute, obviously the statutes relating to district court jurisdiction referred to above (18 U. S. C. 3231 and 28 U. S. C. 1345) can have no possible bearing on this Court's holding in *Woods* v. *Hills, supra.**

As recognized by the court below, the Emergency Court of Appeals in *150 East 47th Street Corp.* v. *Porter*, 156 F. 2d 541 (1946) construed § 1(b) of the Emergency Price

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* See *United States* v. *Valenzuela*, 95 F. Supp. 363, 365 (S. D. Cal. Cent. Div., 1951), holding that the remedy of restitution under the Housing and Rent Act of 1947 after decontrol was

> "* * * preserved by the general savings clause in 1 U. S. C. A. § 109, Act of July 30, 1947, c. 388, Sec. 1, 61 Stat. 633, and the special savings clause in the Housing and Rent Act of 1947 as amended, Sec. 204(f)(4), Public Law 574, 81st Congress, c. 354, 2nd session, approved June 23, 1950."

Control Act of 1942 as amended "to have the effect of saving the jurisdiction of the court to entertain after the termination of the Act a pending suit which had been brought under Section 204(e) of the Act * * *" (R. 76). The court below, however, attempted to distinguish the *Porter* decision because of the "complex interrelated jurisdictional set-up" (R. 76). This is unrealistic. Although the Emergency Court of Appeals may have been "more persuaded" by such set-up that its already determined construction of § 1(b) was correct, the plain fact was that jurisdiction was preserved because it was "beyond doubt" that the situation came within the literal terms of the savings clause in § 1(b) [156 F. 2d at 544], as was later recognized by this Court in *Woods* v. *Hills, supra.*

As regards the Price Control Act having been "drawn upon the principle that exclusive jurisdiction to pass upon questions of validity are centered in this Court [Emergency Court of Appeals] and the Supreme Court" (R. 76), the insurance statute (Act of June 29, 1940) was also drawn upon a similar principle that exclusive jurisdiction over insurance claims was to center in the district courts.* That there has been no Congressional deviation from this principle is confirmed by Congress having again vested exclusive jurisdiction in the district court in the subsequent War Risk Insurance Act enacted September 7, 1950 (64 Stat. 773; 46 U. S. C. §§ 1281-1294, 1292).**

How can it be believed or assumed that Congress intended that suits brought in the district court under the old

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* The Court of Claims had never had jurisdiction of war risk insurance claims under the Act of June 29, 1940 as amended (46 U. S. C. §§ 1128-1128h), it having been held in *United States* v. *Leahy,* 148 F. 2d 462, 466 (3rd Cir. 1945), also in *Levine* v. *United States,* 80 F. Supp. 674, 679 (Ct. Cl. 1948), cert. den. 336 U. S. 936, that the district courts had exclusive jurisdiction of such claims under § 1128d (compare *Adams et al* v. *United States,* 101 F. Supp. 956, 959, D. C. Mass. 1952).

** A similar provision had been made in Section 5 of the War Risk Insurance Act of September 2, 1914, 38 Stat. 711, 712.

insurance Act must be dismissed and the assureds relegated to the Court of Claims; but that suits under the new insurance Act must be brought in the district courts and nowhere else? The mere absurdity of that distinction should be adequate answer.

Nor was the *Porter* case, *supra*, distinguishable on the other ground suggested (R. 75-76) i.e., that there was no statutory authority for any other court to entertain that suit. The meaning of the general savings statute cannot depend on how it may work out in different cases. The decision below in applying § 109, if governing one case would perforce apply in every case, although such construction of said section would in many instances render the same nugatory—leaving a plaintiff with a substantive right without a remedy to enforce it.*

Consideration of the foregoing decisions emphasizes our view that the harsh construction of the general savings statute by the court below is at variance with that indicated by this Court, and that § 109 should be applied liberally rather than grudgingly, as required by its express language and remedial purpose.**

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* See pp. 20, 21, *infra*.

** Litigation of the merits by the Government for nearly four years after the 1947 repeal of the insurance statute, without raising the question of jurisdiction, and the fact that the Government did not raise the question in other similar cases (footnote, *supra*, p. 3) would seem to constitute Governmental administrative interpretation in petitioner's favor, of the application of § 109.

Compare *United States* v. *The Thekla*, 266 U. S. 328, 339-341, where the Government in the position of a private suitor was held to have waived the defense of lack of jurisdiction by suing affirmatively in respect of the same subject-matter. Mr. Justice Holmes said (p. 341):

> "* * * the reasons are strong for not obstructing the application of natural justice against the Government by technical formulas when justice can be done without endangering any public interest."

5. All the equities favor the literal—likewise reasonable—application of § 109 advocated by the petitioner.

The decision below would effect far more than requiring petitioner to relitigate this case in the Court of Claims. Here, the Government's *liability* could be substantially altered unless the entire insurance statute was saved by § 109. Such a situation was noted as absent in *Bruner* (343 U. S. at 117).

For example, substantial interest had already accrued to petitioner as early as the repeal date.* But if relegated to the Court of Claims petitioner might lose all such accrued interest**, since the Court of Claims appears empowered to award interest only from the date of entry of judgment (28 U. S. C. § 2516),—which would be years after the time to which interest had already accrued. All accrued interest would thus be wiped out.

No such problem existed in *Bruner* (343 U. S. 112), since under the Tucker Act, whether jurisdiction lay in the district court or in the Court of Claims, interest was recoverable only from the date of judgment [28 U. S. C. § 2411(b)].

The decision below could have even more detrimental consequences. Shipowners, even though they brought timely insurance suits in the district court, the only court then having full and clear jurisdiction, might now find themselves time barred in the Court of Claims. 28 U. S. C. § 1500 may have discouraged protective efforts while the district court's jurisdiction was not held for naught. The well-understood purpose of that section was to require election.

It would indeed be a nebulous sort of "liability" that would be preserved if the savings statute were interpreted

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* See *National Bulk Carriers* v. *United States* (The Virginia), 169 F. 2d 943, 950 (3rd Cir. 1948); *Levine* v. *United States*, 80 F. Supp. 674, 679 (Ct. Cl. 1948), cert. den. 336 U. S. 936.

** Unless the petitioner is entitled to interest from the date of loss as an integral part of just compensation—this point having been decided adversely to petitioner in the district court but not reached by the court below. Many of the pending insurance cases referred to in Appendix II, *infra*, pp. 29-31, apparently relate to insurance claims not involving just compensation.

and applied in a way to result in claimants having theoretical substantive rights without the means of enforcing them —"ghosts", as Mr. Justice Holmes called them in the *Western Maid,* 257 U. S. 419, 433.

No wonder that the court below reached its harsh conclusion only "most reluctantly" (R. 77). We submit that this Court should not allow to be crystallized in the law a narrow and strained construction of a statute aimed to preserve rights, not to destroy them.

6. In any event the district court continued to have jurisdiction under the Suits in Admiralty Act.

At the time of her loss the DONA AURORA was being operated under requisition time-charter for the United States and employed as a merchant vessel (R. 41, 43).

Under the Suits in Admiralty Act (46 U. S. C. §§ 741-752):

> "In cases where if such vessel were privately * * * operated, * * * a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel *in personam* may be brought against the United States * * * provided that such vessel is employed as a merchant vessel * * *" (§ 742).

Unquestionably, when the present suit under § 225 (§ 1128d) was commenced in December, 1944 a proceeding in admiralty could be maintained by a shipowner on a policy of marine war risk insurance with respect to a vessel privately operated. *Insurance Company* v. *Dunham,* 11 Wall. 1, 21; *North German Fire Insurance Co.* v. *Adams,* 142 F. 439 (7th Cir. 1905); *Jeffcott* v. *Aetna Ins. Co.,* 129 F. 2d 582 (2nd Cir. 1942). Accordingly it seems that, apart from the special grant of district court jurisdiction under § 225, the district court also had jurisdiction under the broad provisions of the Suits in Admiralty Act which were not affected by the repeal of the insurance statute.

It is well established that a vessel under time charter to the United States is to be regarded as operated "for" the

United States. *Matson Navigation Co.* v. *United States*, 284 U. S. 352, 357; *N. S. Byonnes & Son, etc.* v. *United States*, 298 F. 123 (S. D. N. Y.; L. Hand, D. J. 1923); *Epstein* v. *United States*, 86 F. Supp. 740, 743 (S. D. N. Y. 1949).

It was also settled by *Matson* that where jurisdiction exists under the Suits in Admiralty Act that jurisdiction is exclusive. Hence, in this case the underlying jurisdiction under the Suits in Admiralty Act necessarily kept alive the district court jurisdiction and precluded relegation of the petitioner to the Court of Claims.

In *Matson, supra*, this Court held that the district court had exclusive jurisdiction under the Suits in Admiralty Act of a cause of action by the shipowner against the United States for reimbursement of crew wages and bonuses pursuant to a requisition time-charter. This Court pointed out (284 U. S. at 357):

> "The language of § 2 [Sec. 742] is general, embracing suits on maritime causes of action by owners, as well as by third persons injured by the operation for the Government of merchant vessels. See Eastern Transportation Co. *v.* United States, 272 U. S. 675, 689, et seq. * * *
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> * * *
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> We think the cause of action is maritime, arising out of the express contract for the operation of vessels for the United States, and is not shown to be within the jurisdiction of the court below [Court of Claims]".

Here the insurance liability and the formal binder were based on the provisions of the requisition time-charter, as amended, whereby the Government undertook to provide war risk insurance coverage on the *Dona Aurora* in an amount measured by "just compensation" (R. 41-44). Under the circumstances *Matson* appears to be sound authority for the view that after the repeal of the insurance statute district court jurisdiction continued under the Suits in Admiralty Act—quite without reference to whether jurisdiction was preserved by § 109.

Indeed, once a suit had been properly brought, as here, under the insurance statute, that statute itself provided (§ 225; § 1128d) that the same should "proceed and shall be heard and determined according to the provisions of" the Suits in Admiralty Act in so far as such provisions were not "inapplicable and are not contrary to or inconsistent with" the provisions of the insurance statute. The district court jurisdiction in admiralty was self-perpetuating, at least as regards the continuance of existing suits, and it was therefore not affected by the repeal.

The same proposition is strengthened by the fact that in the sentence preceding that from which we have just quoted, after providing that an insurance action may be brought, the section continues "* * * and maintained against the United States in the district court of the United States sitting in admiralty * * *".

In view of this Congressional pronouncement that suits under the insurance statute should be *maintained, proceed,* and be *heard* and *determined* under the Suits in Admiralty Act, very clear language—not found here—would be required to justify a court in disregarding the obvious intent that the district court should deal with an insurance suit from beginning to end—to final determination.

In *Reinold* v. *United States,* 167 F. 2d 556 (2d Cir. 1948), reversing on the merits 72 F. Supp. 92, cert. den. 335 U. S. 824, a suit against the Government on a policy of war risk insurance, jurisdiction was based directly on the Suits in Admiralty Act.

If a question be asked—w[illegible] was enactment of § 225 (§ 1128d) necessary to give the district court jurisdiction as concerns insurance claims, if such jurisdiction already was provided by the Suits in Admiralty Act—the simple answer, involving no inconsistency, is that the power of the United States to provide insurance under the insurance statute (§§ 222, etc., Merchant Marine Act of 1936 as amended; 1128a, etc.) extended far beyond the authority to insure merchant vessels operated by or for the United States. It included power to insure Philippine vessels and

certain foreign flag vessels, as well as all American vessels (including vessels under construction), whether owned or controlled by or made available to the United States or not, i.e., insurances as to which in many instances suits could not be maintained under the Suits in Admiralty Act.

The decision in *United States Lines Co.* v. *United States*, 52 F. Supp. 758 (S. D. N. Y. 1943) is not contrary to our position. The court merely held that suit would not lie under the insurance statute (§ 225; § 1128d) because the Government had not issued any insurance policy or binder, and its assumption of insurance risks was contained only in a bareboat charter of the vessel to the United States. Jurisdiction could not be based on the Suits in Admiralty Act since the vessel was operated as a military transport, i.e., as a public vessel, not a merchant vessel.*

Conclusion

For the foregoing reasons it is respectfully submitted that the judgment of the court below should be reversed.

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Dated: New York, December 24, 1952.

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* *Calmar Steamship Corp.* v. *United States*, 197 F. 2d 795, 802 (2nd Cir.), certiorari granted October 20, 1952—No. 262 this Term, has no bearing on the question of jurisdiction presented here. That suit was not to recover Government insurance but was for damages against the Government under a voyage charter for failure to insure, and the Court of Appeals held that the Suits in Admiralty Act did not provide jurisdiction, on the ground that the vessel was not operated as a "merchant vessel" because she carried only military supplies.

Appendix I

Relevant Portions of the War Risk Insurance Act of June 29, 1940, as amended (46 U. S. C. §§ 1128-1128h; §§ 221-229, Merchant Marine Act of 1936, as amended):

"§ 1128 [§ 222]

The Commission [see Note below] may insure against loss or damage by the risks of war, persons, property, or interests, as follows:

(a) (1) American vessels (including vessels under construction), (2) vessels registered under the law of the Philippine Islands, * * *

(b) Cargoes shipped or to be shipped on any vessels specified in subsection (a) * * *.

(c) The disbursements (including advances to masters and general average disbursements) and freight and passage moneys of such vessels.

(d) The personal effects of the master, officers, and crews of such vessels, * * *.

(e) Masters, officers, and crews of such vessels * * * against loss of life, personal injury, * * *.

(f) Statutory or contractual obligations or other liabilities of such vessels or of the owner or charterer of such vessels of the nature customarily covered by insurance; * * *.

* * * *

§ 1128d [§ 225]

In the event of disagreement as to a claim for losses or the amount thereof, on account of insurance under sections 1128-1128h of this title, an action on the claim may be brought and maintained against the United States in the district court of the United States sitting in admiralty in the district in which the claimant or his agent may reside * * *. Said suits shall proceed and shall be heard and determined according to the provisions of sections 741-752 of this title [Suits in Admiralty Act, sections 1-12]

insofar as such provisions are not inapplicable and are not contrary to or inconsistent with the provisions of sections 1128-1128h of this title. All persons having or claiming to have an interest in such insurance, or who it is believed might assert such an interest, may be made parties to such suit, either initially or upon the motion of either party. In any case where the Commission acknowledges the indebtedness of the United States on account of such insurance, and there may be a dispute as to the person or persons entitled to receive payment, the United States may bring an action in the nature of a bill of interpleader against the persons having or claiming to have any interest in such insurance, or who it is believed might assert such an interest, in the District Court of the United States for the District of Columbia, or in the district court in and for the district in which any such person resides. In either of such actions any person claiming to have an interest in such insurance, or who it is believed might assert such an interest, if not an inhabitant of or found within the district within which either of such actions is brought, may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct, and if it be shown to the satisfaction of the court that persons unknown might assert a claim on account of such insurance, the court may direct service upon such persons unknown by publication in the Federal Register. Judgment in any such action shall discharge the United States from further liability to any parties to such action, and to all persons where service by publication upon persons unknown is directed by the court. The procedure herein provided shall apply to all actions now pending against the United States under the provisions of sections 1128-1128h, as amended."

[NOTE: By amendment of March 6, 1942 (56 Stat. 140) the Administrator of War Shipping Administration was given authority to insure etc., in conformity with Executive Order No. 9054 of February 7, 1942.]

Section 1 of the Joint Resolution of July 25, 1947 (61 Stat. 449, 450).

"JOINT RESOLUTION

To terminate certain emergency and war powers

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following statutory provisions are hereby repealed:

* * * * *

Act of June 29, 1940 (54 Stat. 689, ch. 447) as amended;

* * * * *

Approved July 25, 1947."

General Savings Statute (61 Stat. 633; 1 U. S. C. § 109)

"§ 109. The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

Relevant portions of the Suits in Admiralty Act (41 Stat. 525-528; 46 U. S. C. 741-752):

"§ 741. No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this chapter shall not apply to the Panama Railroad Company. Mar. 9, 1920, c. 95, § 1, 41 Stat. 525."

"§ 742. In cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against any corporation mentioned in section 741 of this title, as the case may be, provided that such vessel is employed as a merchant vessel or is a tugboat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States. Mar. 9, 1920, c. 95, § 2, 41 Stat. 525."

Appendix II

Other insurance cases now pending in the Southern District of New York, brought under the War Risk Insurance Act of June 29, 1940, as amended:

Docket No.	Name of Case	Nature of Casualty	Date of Loss	Date of Libel	Amount Involved
Ad. 131-343	*American Hawaiian S. S. Co.* v. *United States* (HONOLULAN)	Total loss by enemy action	July 22, 1942	July 8, 1944	$479,827.25
" 132-352	*American Hawaiian S. S. Co.* v. *United States* (OREGONIAN)	Total loss by enemy action	Sept. 13, 1942	Sept. 12, 1944	344,921.57
" 133-112	*American Hawaiian S. S. Co.* v. *United States* (MONTANAN)	Collision and subsequent loss by enemy action	Oct. 9 and June 3, 1942	Oct. 9, 1944	25,000.00 489,080.21
•" 135-237	*Calmar S. S. Corp.* v. *United States* (YORKMAR)	Total loss by enemy action	Oct. 9, 1943	Mar. 13, 1945	65,000.00
" 131-327	*Hoosier Marine Corp.* v. *United States* (HOOSIER)	Total loss by enemy action	July 10, 1942	July 7, 1944	41,618.92

• Settlement understood to be pending in this case.

Docket No.	Name of Case	Nature of Casualty	Date of Loss	Date of Libel	Amount Involved
Ad. 135-299	*Panama Transport Co.* v. *United States* (ESSO BELGIUM)	Convoy collision	Oct. 25, 1942	Mar. 23, 1945	$ 1,500.00
" 138-11	*Panama Transport Co.* v. *United States* (J. H. SENIOR)	Convoy collision	Aug. 18, 1943	Aug. 17, 1945	4,365,100.00 (Damage to J. H. SENIOR and crew) 19,452,562.00 (Claims against J. H. SENIOR by colliding vessels)
" 131-311	*Panama Transport Co.* v. *United States* (STANDARD)	Collision	July 4, 1942	July 1, 1944	50,000.00
" 145-162	*Panama Transport Co.* v. *United States* (ESSO BALBOA)	Collision	Sept. 19, 1944	Sept. 18, 1946	622,308.85
" 131-117	*Petroleum Shipping Company Ltd.* v. *United States* (STANVAC CALCUTTA)	Total loss by enemy action	June 6, 1942	May 29, 1944	30,354.14
" 134-169	*Standard Oil Co. of N. J.* v. *United States* (ESSO CHARLESTON)	Collision	Dec. 31, 1942	Dec. 26, 1944	54,478.74

Docket No.	Name of Case	Nature of Casualty	Date of Loss	Date of Libel	Amount Involved
Ad. 131-124	*Standard Oil Co. of N. J. v. United States* (E. T. BEDFORD)	Damage by enemy action	May 31, 1942	May 31, 1944	$ 30,000.00
" 135-298	*Standard Oil Co. of N. J. v. United States* (F. Q. BARSTOW)	Convoy collision	Oct. 25, 1942	Mar. 23, 1945	5,500.00
" 135-336 137-337 158-143	*Standard Oil Co. of N. J. v. United States* (ESSO MANHATTAN) and cross suit	Damage from mine	Mar. 29, 1943	Mar. 28, 1945 and Oct. 11, 1948 (Consolidated suit)	50,000.00 (443,567.96 cross-claim of U. S. A.)
" 137-6	*Standard Oil Co. of N. J. v. United States* (BEACON)	Convoy collision	June 15, 1943	June 14, 1945	42,000.00
" 139-313	*Standard Oil Co. of N. J. v. United States* (WALLACE E. PRATT)	Convoy collision	Nov. 26, 1943	Nov. 24, 1945	15,000.00
" 139-326	*Standard Oil Co. of N. J. v. United States* (WALLACE E. PRATT)	Collision	Nov. 26, 1943	Nov. 26, 1945	15,000.00
" 131-323	*States Marine Corp. v. United States* (KEYSTONE)	Total loss by enemy action	Mar. 13, 1943	July 6, 1944	245,125.64
" 134-233	*Robert T. Welsh v. United States* (AIGRETTEE)	Total loss by enemy action	Feb. 1, 1943	Jan. 5, 1945	7,500.00